

**APPROVED AMENDMENTS TO FED. R. APP. P. AND 5TH CIR. R.
EFFECTIVE DECEMBER 1, 2002**

This file contains two related documents. The first is a brief analysis of the key amendments to the FED. R. APP. P. and the 5TH CIR. R. which become effective on December 1, 2002, absent Congressional action. The second document contains the text of the approved changes to the 5TH CIR. R. This text also includes some of the amended language of the FED. R. APP. P. where we believed it helpful to understand the amendments to the 5TH CIR. R.

**ANALYSIS OF KEY AMENDMENTS TO THE FED. R. APP. P.
AND 5TH CIR. R.**

The Supreme Court has submitted proposed changes to the Federal Rules of Appellate Procedure. They will become effective on December 1, 2002, unless Congress makes any changes. Several of this court's practices will change as a result of the amendments. To conform this court's practices with the federal rules, this court has approved the following major changes to the 5TH CIR. R.

FED. R. APP. P. 4 Appeal as of Right

4(a)(5) Extension of Time to File Notice of Appeal

Presently in this circuit (and several others), a party filing a motion for extension of time to file notice of appeal during the first 30 days (60 days if the United States is a party in a civil case) after judgment is entered has to show good cause. If the motion is filed during the next 30 days, the party has to show excusable neglect. The new Rule 4(a)(5) will allow a showing of *either* good cause *or* excusable neglect regardless of when the motion for extension of time is filed.

4(a)(7) Entry Defined

The Rules Advisory Committee recognized several conflicts among the circuits in dealing with the interplay of Rule 4(a)(7) of the FED. R. APP. P. and Rule 58 of the FED. R. CIV. P. Both rules have been changed to eliminate some of the conflicts.

FED. R. CIV. P. 58 is being amended to provide that orders on motions for judgment (Rule 50(b)), to amend or make additional findings of fact (Rule 52(b)), for attorney fees (Rule 54), for new trial or to alter or amend judgment (Rule 59), or for relief from judgment (Rule 60) do not need to be set out in a separate document. FED. R. APP. P. 4(a)(7) will provide that if the Civil Rules do not require a separate document, the Appellate Rules do not either. In these cases, judgment is entered for purposes of appeal when the judgment or order is entered on the civil docket pursuant to FED. R. CIV. P. 79(a).

Next, the rule addresses the situation where a separate document is necessary but the district court does not prepare one. The amendment provides that judgment will be deemed entered 150 days after the judgment or order was entered on the civil docket. The time for filing post-judgment motions and notice of appeal will begin running from that date.

The amendment also gives the appellant an absolute right to proceed on appeal without awaiting the formal entry of judgment on a separate document. The appellee cannot prevent

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the appeal from going forward by objecting that the district court did not enter a separate document. In sum, an appellant who waives the separate document requirement may file notice of appeal anytime within 150 days after entry of the judgment on the docket and the validity of the appeal will not be affected.

4(b)(5) Appeal in Criminal Cases

The filing of a motion to correct a sentence under FED. R. CRIM. P. 35(a) suspends the time to file a notice of appeal from a criminal conviction. FED. R. APP. P. 4 is changed so the time for a notice of appeal in a criminal case continues to run despite the filing of a motion to correct sentence under FED. R. APP. P. 35(a).

FED. R. APP. P. 5 Appeal by Permission; 21 Extraordinary Writ; 5TH CIR. R. 5; 21

5(c); 21(d) Form of Papers

Papers filed for permission to appeal or for an extraordinary writ are considered “other papers” for purposes of FED. R. APP. P. 32(c)(2). That is, no cover is required if the caption and signature page together contain the information required by Rule 32(a)(2), and the length limits of Rule 32(a)(7) do not apply. The rule puts a 20-page limit on any papers filed in proceedings under Rule 5 and a 30-page limit on pleadings under Rule 21. 5TH CIR. R. 5 and 21 are changed to be consistent with the Federal rules.

5TH CIR. R. 9.5 Release Pending Appeal

The way of computing time under FED. R. APP. P. 26 is being changed, *see* below. To accommodate the change, 5TH CIR. R. 9.5 is changed to reflect that a written response to a motion for release pending appeal is due 7 *working* days, rather than 7 *calendar* days, after service of the memorandum or application.

5TH CIR. R. 15.1 Agency Review Procedures

The party petitioning for review or enforcement of an agency order *must* attach to the petition a copy of the order or orders to be reviewed.

FED. R. APP. P. 24 Proceedings in Forma Pauperis

24(a)(2), (3) Leave to Proceed in Forma Pauperis

Rule 24 is being amended to remove conflicts with the Prison Litigation Reform Act of 1995 (PLRA). The rule applies only to inmates proceeding in forma pauperis in civil actions

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and appeals. Under the PLRA, prisoners granted IFP status must pay a portion of the filing fees initially and have the remainder deducted from their prison trust accounts as funds become available. The rule is amended to allow a person proceeding IFP to do so without prepaying or giving security for fees and costs “unless a statute [such as the PLRA] provides otherwise.”

Similarly, when the district court grants IFP status, the person normally retains that status on appeal without having to reapply. However, the PLRA requires that IFP status be granted for each proceeding. The amended rule allows persons to proceed on appeal IFP if they did so in the district court “unless a statute provides otherwise.”

FED. R. APP. P. 25 Filing and Service

25(c) Manner of Service

“Personal service” may be accomplished by delivery to a responsible person at counsel’s office, or by using electronic service if the person being served consents in writing. Electronic service will be complete on transmission of the document, unless the sending party receives notification that the document was not received.

The rule also allows courts to permit parties to use the court’s transmission equipment to complete electronic service. This court has no plans at this time to provide this service.

25(b) Proof of Service

The certificate of service will be considered deficient if service was by electronic or facsimile means but the certificate does not contain the electronic or facsimile address.

5TH CIR. R. 25

25.2 Electronic Filing

The courts are in the process of developing and testing software to allow documents to be filed electronically. Rules and procedures will be developed by the clerk to govern electronic filing. The required standard for documents will be Adobe Portable Document Format (PDF). Electronic filing will not be implemented in the immediate future, so there is no need to go into detail about it now.

25.3 Electronic Noticing

In certain cases or classes of cases, the clerk will be authorized to serve all papers, including opinions, electronically on any party who consents. Parties must agree that

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electronic notice is the only notice the clerk will provide.

FED. R. APP. P. 26 Computing and Extending Time

26(a) Computing Time

The Appellate Rules will be brought into line with the Civil and Criminal Rules by providing that intermediate Saturdays, Sundays, and legal holidays will not be counted if the time permitted for acting is less than 11 days, unless the time is stated in calendar days. Some adjustments are made to time limits, either by changing the amount of time allowed or by removing the “calendar days” restriction.

26(c) Additional Time after Service

Ordinarily, if a paper is delivered on other than the date contained in the certificate of service, the receiving party gets 3 extra days to respond; if delivery is on the date of the certificate of service, no additional time is allowed. When service is by electronic means, the receiving party always will be entitled to 3 extra days to respond.

FED. R. APP. P. 26.1 Corporate Disclosure Statement

This circuit uses a Statement of Interested Persons, which is broader in scope than the Corporate Disclosure Statement. Therefore, although the contents of FED. R. APP. P. 26.1 are amended significantly, they have no relevance to Fifth Circuit practice. Instead, you should refer to the changes to 5TH CIR. R. 28.2.1, discussed below.

FED. R. APP. P. 27 Motions

27(a)(3)(A) Response

A response to a motion must be filed within 8, rather than 10, days after service, as calculated under FED. R. APP. P. 26(a).

27(a)(4) Reply

A reply to a response to a motion must be filed 5 days after service of the response, as calculated under FED. R. APP. P. 26(a).

27(d)(1)(B) Covers

Motions do not require covers, but if you use one it must be white.

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5TH CIR. R. 27.1, 27.4

The current placement of the 5TH CIR. R. implies that a certificate of conference is required only on motions for extension of time. The certificate requirement is moved to 5TH CIR. R. 27.4 to make it clear that *all* motions must contain a certificate of conference.

FED. R. APP. P. 28 Briefs

28(j) Citation of Supplemental Authority

The amended rule permits parties to bring supplemental authorities to the court's attention after briefs have been filed and permits argument on how the authority is relevant. Such supplements are limited to 350 words. The word count applies to the body of the letter – from the first word after the salutation to the last word before the complimentary closing – and includes footnotes. A response is subject to the same limitations.

5TH CIR. R. 28

28.2.1 Certificate of Interested Persons

Parties must update the certificate whenever the required information changes.

The form for reporting on interested persons has changed slightly to insure that all entities covered by the rule are included.

28.6 Signing the Brief

The 5TH CIR. R. currently requires that all briefs be signed by an attorney or a party appearing pro se. This requirement now will appear in FED. R. APP. P. 32(d), so it is removed from the local rule.

5TH CIR. R. 30 Record Excerpts

30.1.2 Filing

The appellant must serve 4 paper copies of the Record Excerpts. If the clerk permits filing of the Record Excerpts in electronic form, they may be filed on a diskette like those used for computer-generated briefs. The parties will be able to consent in writing to accept service of the Record Excerpts by any electronic means that the parties agree upon. If the clerk permits additional Record Excerpts to be filed, the same provisions apply.

FED. R. APP. P. 31 Serving and Filing Briefs

31(b) Number of Copies

The amendment clarifies that *all* parties, including any unrepresented parties, must be served with two copies of a party's briefs.

5TH CIR. R. 31 Briefs

31.1 Number of Copies; Computer Generated Briefs

All computer-generated briefs must be accompanied by a computer-readable diskette copy. The brief must be prepared in Adobe Portable Document Format (PDF).

31.3 Time for Mailing

The rule adds the provision that, if electronic filing of briefs is permitted, appellee has 33 days from the date on the certificate of service on appellant's brief to complete electronic filing of its brief with the clerk.

FED. R. APP. P. 32 Form of Briefs, Appendices, and Other Papers

32(a)(2) Form of Brief

If a party files a supplemental brief, the cover must be tan. This does not apply to the additional briefs that must be filed if this court grants rehearing en banc. Those additional briefs will have the same color covers, red or blue, as the initial briefs.

32(a)(7)(C)(ii) Certificate of Compliance (see 5TH CIR. R. 32.3)

The rule provides for a Form 6 for use as a certificate of compliance with the type-volume limits for briefs. Accordingly, reference to the form previously used by the clerk's office is removed from the 5TH CIR. R. Filers should use Form 6.

32(c)(2)(A) Other Papers

If a cover is used on a petition for panel rehearing or for hearing or rehearing en banc, it must be white.

32(d) Signature; 5TH CIR. R. 32.5

For some years, the Fifth Circuit has required that counsel or unrepresented parties sign briefs. This year the Federal Rules add the same requirement, so the provision is removed from the 5TH CIR. R.

FED. R. APP. P. 41 Mandate

41(b) When Issued

Because of the change in the manner of computing time periods less than 11 days, the rule is amended to provide that mandates will issue on the later of 7 *calendar* days after 1) expiration of the time to file a petition for rehearing; 2) entry of an order denying panel rehearing or rehearing en banc; or 3) entry of an order denying a motion to stay mandate. This court will continue to issue mandates on the 8th calendar day after the time for filing a petition for rehearing expires, or after entry of an order denying the petition.

FED. R. APP. P. 44 Constitutional Questions

44(b) State Statute

Rule 44(a) describes the procedure to be followed when a party challenges the constitutionality of an act of Congress when the United States is not a party. Section (b) is added to prescribe the same procedure when a party challenges the constitutionality of a state statute when the state or its representative is not a party.

5TH CIR. R. 47 Other Fifth Circuit Rules

47.8.2(a) Attorney's Fees and Expenses Under the Equal Access to Justice Act

The Administrative Office of the United States Courts has abolished Form A.O. 291. Consequently, the requirement that the form be submitted with applications for an award of fees and expenses under 28 U.S.C. § 2412(d)(1)(B) is removed.

TEXT OF RULE CHANGES

FRAP 5. APPEAL BY PERMISSION

- (c) ***Form of Papers; Number of Copies.*** All papers must conform to Rule 32(c)(2). Except by the court's permission, a paper must not exceed 20 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 5(b)(1)(E). An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

FIFTH CIRCUIT RULE 5

Length. *The certificate of interested persons required by 5TH CIR. R. 28.2.1 does not count toward the page limit.*

FIFTH CIRCUIT RULE 8

8.10 Time Requirements for Habeas Petitions. *Habeas petitioners sentenced to death who wish to appeal an adverse judgment by the district court on a first petition for writ of habeas corpus, or who seek permission to file a successive petition, must exercise reasonable diligence in moving for a certificate of appealability or for permission to file a second or successive habeas petition, and a stay of execution with the clerk of this court at least 5 days before the scheduled execution. Counsel who seek a certificate of appealability or permission to file a successive petition less than 5 days before the scheduled execution must attach to the proposed filing a detailed explanation stating under oath the reason for the delay. If the motions are filed less than 5 days before the scheduled execution, the court may direct counsel to show good cause for the late filing. If counsel cannot do so, counsel will be subject to sanctions.*

If the state asks this court to vacate a district court order staying an execution, counsel for the state will file the state's appeal and application for relief from the stay as soon as practicable after the district court issues its order. Any unjustified delay by the state's counsel in seeking relief in this court will subject counsel to sanctions.

FIFTH CIRCUIT RULE 9

9.5 Response. *The opposing party must file a written response to all requests for release within 7 days after service of the memorandum or application.*

FIFTH CIRCUIT RULE 15

15.1 Docketing Fee and Copy of Orders - Agency Review Proceedings. *At the time a party files a petition for review under FED. R. APP. P. 15, the party must:*

- (a) *Pay the filing fee to the clerk; and*
- (b) *Attach a copy of the order or orders to be reviewed.*

**FRAP 21. WRITS OF MANDAMUS AND PROHIBITION,
AND OTHER EXTRAORDINARY WRITS**

- (d) ***Form of Papers; Number of Copies.*** All papers must conform to Rule 32(c)(2). Except by the court's permission, a paper must not exceed 30 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 21(a)(2)(C). An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

FIFTH CIRCUIT RULE 21

Petition for Writ. *The petition must contain a certificate of interested persons as described in 5TH CIR. R. 28.2.1. The certificate of interested persons and the items required by 5TH CIR. R. 21 do not count toward the page limit.*

In addition to the items required by FED. R. APP. P. 21, the application must contain a copy of any memoranda or briefs filed in the district court supporting the application to that court for relief and any memoranda or briefs filed in opposition, as well as a transcript of any reasons the district court gave for its action.

FRAP 25. FILING AND SERVICE

- (c) ***Manner of Service.***

- (1) Service may be any of the following:
 - (A) personal, including delivery to a responsible person at the office of counsel;
 - (B) by mail;
 - (C) by third-party commercial carrier for delivery within 3 calendar days; or
 - (D) by electronic means, if the party being served consents in writing.
- (2) If authorized by local rule, a party may use the court's transmission equipment to make electronic service under Rule 25(c)(1)(D).
- (3) When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used

to file the paper with the court.

- (4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received by the party served.

(d) Proof of Service.

- (1) A paper presented for filing must contain either of the following:
 - (A) an acknowledgment of service by the person served; or
 - (B) proof of service consisting of a statement by the person who made service certifying:
 - (i) the date and manner of service;
 - (ii) the names of the persons served; and
 - (iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.
- (2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(B), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.
- (3) Proof of service may appear on or be affixed to the papers filed.

FIFTH CIRCUIT RULE 25

25.1 Facsimile Filing. *The clerk may accept, for filing, papers sent by facsimile in situations the clerk determines are emergencies or that present other compelling circumstances.*

25.2 Electronic Filing. *In cases or classes of cases that the court may select, the clerk may allow a moving party to file a required document electronically. (Facsimile filing is distinguished from “electronic” filing and is covered by Rule 25.1 above.) If electronic filing is permitted, the clerk shall advise the parties of acceptable formats and procedures. Adobe Acrobat PDF format is the preferred standard. Any account name and password the clerk issues to facilitate an electronic filing shall be kept confidential and used solely for electronic filings of such papers and briefs as the clerk may permit. The electronic image of the document constitutes the original document for all court purposes. Filing is complete when the document is received in the clerk’s database.*

To each electronically filed document, the filer must add a certificate verifying that the original paper document was signed by the attorney or party shown as the filer. The filer must maintain the signed original paper document at least until the appellate process is complete, including action on any petition for writ of certiorari to the United States Supreme Court. Upon request, the signed original paper document must be provided to other parties or to the court.

The clerk may allow a district court clerk to transmit the notice of appeal and other required docketing documents electronically.

The clerk may require paper copies of any documents filed electronically. See 5th Cir. R. 30 and 32 for instructions regarding the procedures for electronic filing of record excerpts and briefs, if permitted.

25.3 Electronic Noticing. *In cases or classes of cases that the court may select, the clerk is authorized to serve all papers, including opinions, electronically on any party who consents to such manner of service. Parties who agree to accept electronic notice must agree the electronic notice will be the only notice provided by the clerk.*

FRAP 26. COMPUTING AND EXTENDING TIME

(a) Computing Time. The following rules apply in computing any period of time specified in these rules or in any local rule, court order, or applicable statute:

- (1) Exclude the day of the act, event, or default that begins the period.
- (2) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless stated in calendar days.
- (3) Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or — if the act to be done is filing a paper in court — a day on which the weather or other conditions make the clerk’s office inaccessible.
- (4) As used in this rule, “legal holiday” means New Year’s Day, Martin Luther King, Jr.’s Birthday, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President, Congress, or the state in which is located either the district court that rendered the challenged judgment or order, or the circuit clerk’s principal office.

(b) Extending Time. For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:

- (1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal;
or
 - (2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the United States, unless specifically authorized by law.
- (c) ***Additional Time after Service.*** When a party is required or permitted to act within a prescribed period after a paper is served on that party, 3 calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service. For purposes of this Rule 26(c), a paper that is served electronically is not treated as delivered on the date of service stated in the proof of service.

FIFTH CIRCUIT RULE 26

26.1 Computing Time. *Except for briefs and record excerpts, all other papers, including petitions for rehearing, are not timely unless the clerk actually receives them within the time fixed for filing. Briefs and record excerpts are deemed filed on the day sent to the clerk electronically where permitted by 5TH CIR. R. 30 and 32, by a third-party commercial carrier for delivery within 3 calendar days, or on the day of mailing if the most expeditious form of delivery by mail is used. The additional 3 days after service by mail, by electronic means, or after delivery to a commercial carrier for delivery within 3 calendar days referred to in FED. R. APP. P. 26(c), applies only to matters served by a party and not to filings with the clerk of such matters as petitions for rehearing under FED. R. APP. P. 40, petitions for rehearing en banc under FED. R. APP. P. 35, and bills of costs under FED. R. APP. P. 39.*

26.2 Extensions of Time. *The court requires timely filing of all papers within the time period allowed by the rules, without extensions of time, except for good cause. Appeals which are not processed timely will be dismissed for want of prosecution without further notice under 5TH CIR. R. 42. If the parties or counsel waive their right to file a reply brief, they must immediately notify the clerk to expedite submitting the case to the court.*

FIFTH CIRCUIT RULE 27

27.1 Clerk May Rule on Certain Motions. *Under FED. R. APP. P. 27(b), the clerk has discretion to act on, in accordance with the standards set forth in the applicable rules, or to refer to the court, the procedural motions listed below. The clerk's action is subject to review by a single judge upon a motion for reconsideration made within the 14 or 45 day period set by FED. R. APP. P. 40.*

27.1.17 *To proceed in forma pauperis, see FED. R. APP. P. 24 and 28 U.S.C. §*

1915;

27.1.18 *To appoint counsel or to permit appointed counsel to withdraw;*

27.1.19 *To obtain transcripts at government expense.*

27.4 Form of Motions. *Parties or counsel must comply with the requirements of FED. R. APP. P. 27 including the length limits of FED. R. APP. P. 27(d)(2). Except for purely procedural matters, motions must include a certificate of interested persons as described in 5TH CIR. R. 28.2.1. Where a single judge or the clerk may act only an original and 1 copy need be filed. All motions requiring panel action require an original and 3 copies. All motions must state that the movant has contacted or attempted to contact all other parties and must indicate whether an opposition will be filed.*

IOP following 5TH CIR. R. 27.5

I.O.P.

TYPEFACE AND TYPE STYLES FOR MOTIONS

MOTIONS MUST BE PREPARED IN ACCORDANCE WITH FED. R. APP. P. 27(d) AND SHOULD MEET THE TYPEFACE AND TYPE STYLE REQUIREMENTS OF FED. R. APP. P. 32(a)(5) AND (6).

GENERAL STANDARDS FOR RULING ON MOTIONS

FIFTH CIRCUIT RULE 28

28.2.1 *Certificate of Interested Persons.* *The certificate of interested persons required by this rule is broader in scope than the corporate disclosure statement contemplated in FED. R. APP. P. 26.1. The certificate of interested persons provides the court with additional information concerning parties whose participation in a case may raise a recusal issue. A separate corporate disclosure statement is not required. Counsel and unrepresented parties will furnish a certificate for all private (non-governmental) parties, both appellants and appellees, which must be incorporated on the first page of each brief before the table of contents or index, and which must certify a complete list of all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent corporations, or other legal entities who or which are financially interested in the outcome of the litigation. If a large group of persons or firms can be specified by a generic description, individual listing is not necessary. Each certificate must also list the names of opposing law firms and/or counsel in the case. The certificate must include all information called for by FED. R. APP. P. 26.1(a). Counsel and unrepresented parties must supplement their certificates of interested persons whenever*

the information that must be disclosed changes.

...(b) *The certificate must be in the following form:*

(2) *The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.*

(Here list names of all such persons and entities and identify their connection and interest.)

*Attorney of record for*_____

28.3 Brief - Order of Contents. *The order of contents of the brief is governed by FED. R. APP. P. 28 and this rule and shall be as follows:*

(1) *A signature of counsel or a party as required by FED. R. APP. P. 32(d);*

28.6 Signing the Brief. *See FED. R. APP. P. 32(d). The signature requirement is interpreted broadly, and the attorney of record may designate another person to sign the brief for him or her. Where counsel for a particular party reside in different locations, it is not necessary to incur the expense of sending the brief from one person to another for multiple signatures.*

FIFTH CIRCUIT RULE 30

30.1.2 Filing. *Four paper copies of excerpts of the district court record must accompany the appellant's brief, see 5TH CIR. R. 30.1.4 and 30.1.5. In addition, if the clerk permits electronic filing of the record excerpts, they may be filed on a computer diskette as specified in 5TH CIR. R. 31.1, or otherwise as the clerk may direct. The appellant must serve a paper copy of the excerpts on counsel for each of the parties separately represented and on any party proceeding pro se. If the party being served agrees in writing, service of a paper copy may be waived and made by such electronic means as the parties agree upon. The appellee may submit additional record excerpts with his or her brief. Four paper copies of any additional record excerpts must be filed with the clerk. In addition, if the clerk permits, the additional record excerpts may be filed electronically (instead of in paper copy) as the clerk may direct.*

FRAP 31. SERVING AND FILING BRIEFS

(b) Number of Copies. *Twenty-five copies of each brief must be filed with the clerk and 2 copies*

must be served on each unrepresented party and on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

FIFTH CIRCUIT RULE 31

31.1 Briefs - Number of Copies; Computer Generated Briefs. *Only 7 paper copies of briefs need be filed. Where a party is represented by counsel and generates his or her brief by computer, and unless the clerk permits electronic filing in another method, the party must file one computer readable diskette copy of the brief with the clerk. The filing party must also serve a computer readable diskette copy on each party separately represented by counsel, unless counsel agree in writing to another method of electronic service. The diskette filed with the court must contain nothing more than the brief. The brief must be prepared in Portable Document File (PDF) format. The diskette's label must include the case name, docket number, identify the brief, i.e. appellant's brief, appellee's brief, etc. The brief must be on a 3½ inch diskette. The certificate of service must indicate service in both paper and electronic form, see FED. R. APP. P. 25(d)(1)(B).*

31.3 Briefs - Time for Mailing or Delivery to a Commercial Carrier. *The appellant must send his or her brief to the clerk not later than 40 days after the date of the briefing notice. Pursuant to FED. R. APP. P. 26(c), the appellee has 33 days from the appellant's date of the certificate of service to place the appellee's brief in the mail, file it with the clerk electronically where permitted, or to give it to a third-party commercial carrier for delivery within 3 calendar days. This rule may not be combined with the additional time provisions of FED. R. APP. P. 26(c) to give the appellee 36 days to file a brief. The certificate of service required by FED. R. APP. P. 25(d) is placed in the brief as specified in 5TH CIR. R. 28.3, and must be dated. See 5TH CIR. R. 39.2 for limitations on recovery of certain mailing and commercial delivery costs.*

FRAP 32. FORM OF BRIEFS, APPENDICES, AND OTHER PAPERS

(a) Form of a Brief.

(2) **Cover.** Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan. The front cover of a brief must contain:

(7) **Length.**

(C) **Certificate of compliance.**

- (i) A brief submitted under Rule 32(a)(7)(B) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:

- ! the number of words in the brief; or

- ! the number of lines of monospaced type in the brief.

- (ii) Form 6 in the Appendix of Forms is a suggested form of a certificate of compliance. Use of Form 6 must be regarded as sufficient to meet the requirements of Rule 32(a)(7)(C)(i).

(c) ***Form of Other Papers.***

- (1) ***Motion.*** The form of a motion is governed by Rule 27(d).

- (2) ***Other Papers.*** Any other paper, including a petition for panel rehearing and a petition for hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

- (A) A cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2). If a cover is used, it must be white.

- (B) Rule 32(a)(7) does not apply.

- (d) ***Signature.*** Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

- (e) ***Local Variation.*** Every court of appeals must accept documents that comply with the form requirements of this rule. By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule.

FIFTH CIRCUIT RULE 32

32.1 Typeface. *Must comply with FED. R. APP. P. 32(a)(5), except that footnotes may be 12 point or larger in proportionally spaced typeface, or 12½ characters per inch or larger in monospaced typeface.*

32.2 Type Volume Limitations. *See FED. R. APP. P. 32(a)(7)(B)(iii). The certificate of interested parties also does not count toward the limitation. A "Brief for*

Appellee/Cross-Appellant” and a “Brief for Cross-Appellee and Reply Brief for Appellant” are considered principal briefs for purposes of the page length and word-volume length limitations.

32.3 Certificate of Compliance. *See Form 6 in the Appendix of Forms to the FED. R. APP. P. A material misrepresentation in the certificate of compliance may result in striking the brief and in sanctions against the person signing the brief.*

32.4 Motions for Extra-Length Briefs. *A motion to file a brief in excess of the page length or word-volume limitations must be filed at least 7 days in advance of the brief’s due date. The court looks upon such motions with great disfavor and will grant them only for extraordinary and compelling reasons. If a motion to file an extra-length brief is submitted, a draft copy of the brief must be submitted with the motion.*

32.5 Rejection of Briefs and Record Excerpts. *If all copies of briefs and record excerpts do not conform to 5TH CIR. R. 28 and 30 and all provisions of FED. R. APP. P. 32, the clerk will file the briefs and record excerpts, but is authorized to return all nonconforming copies. An extension of 10 days is allowed for resubmission in a conforming format. The court may strike briefs and record excerpts if the party fails to submit conforming briefs or record excerpts within 10 days. If at any time the clerk believes the non-conformance is egregious or in bad faith, the clerk, in the alternative to filing the nonconforming matters, may submit them to a single judge, who can reject them and direct that they be returned unfiled. Failure to submit conforming briefs or record excerpts may result in imposition of sanctions.*

32.6 Color of Covers of Briefs in Cross-Appeals.

When the appellee has filed a cross appeal the brief color cover is as follows:

Brief for Appellant - Blue

Brief for Appellee-Cross-Appellant - Red

Brief for Cross-Appellee and Reply Brief for Appellant - Red

Reply Brief of Cross-Appellant - Gray

**FRAP 41. MANDATE: CONTENTS; ISSUANCE
AND EFFECTIVE DATE; STAY**

- (b) When Issued.** *The court’s mandate must issue 7 calendar days after the time to file a petition for rehearing expires, or 7 calendar days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The*

court may shorten or extend the time.

FIFTH CIRCUIT RULE 45

45.3 Office To Be Open. *The clerk's office is open for business on all days except Saturdays, Sundays, designated federal holidays, and Mardi Gras.*

FIFTH CIRCUIT RULE 46

46.1 Admission and Fees. *Attorneys must have and maintain a valid underlying license to practice law issued by a governmental licensing authority listed in FED R. APP. P 46(a)(1) to be admitted and continue to practice before this court. Admission is governed by FED. R. APP. P. 46 and this rule. Effective January 1, 2002, newly admitted attorneys are admitted for a period of 5 years. At the conclusion of the 5 year period, and upon notice from the clerk, they will have to reapply for admission. Attorneys who were admitted prior to January 1, 2002, are required, following 5 years after their admission and upon notice from the clerk, to reapply for admission for a 5 year period. Each attorney must pay the clerk an admission and readmission fee fixed by court order. An attorney appointed to represent an appellant in forma pauperis and an attorney who appears on behalf of the United States must have all other qualifications for admission, but is admitted in this court without paying an admission fee.*

46.2 Suspension or Disbarment. *In addition to FED. R. APP. P. 46(b), attorneys may be suspended or removed from the roll of attorneys permitted to practice before this court if the appropriate law licensing authority withdraws or suspends the attorney's license to practice law, or the license to practice lapses.*

46.3 Entry of Appearance. *Attorneys admitted to the bar of this court must enter their appearance in each case in which they participate at the time the case is docketed or upon notice by the clerk. A form for entry of appearance is provided by the clerk. In addition to other pertinent information, the form requires counsel to cite all pending related cases and any cases on the docket of the Supreme Court, or this or any other United States Court of Appeals, which involve a similar issue or issues. Counsel must update such information at the time of briefing. Counsel must also indicate on the form whether the appeal is in a category of cases requiring preference in processing and disposition as set out in 5TH CIR. R. 47.7.*

FIFTH CIRCUIT RULE 47

47.8.2 Attorney's Fees and Expenses Under the Equal Access to Justice Act. *This rule implements the provisions of the Equal Access to Justice Act, Public Law No. 96-481, 94 Stat. 2325 (1980).*

- (a) *Applications to the Court of Appeals.* An application for an award of fees and expenses pursuant to 28 U.S.C. § 2412(d)(1)(B) must identify the applicant and the proceeding for which an award is sought. The application must show the nature and extent of services provided in this court and that the applicant has prevailed, and must identify the position of the United States or an agency thereof that the applicant alleges was not substantially justified.
- (b) *Petitions by Permission.* A petition for leave to appeal pursuant to 5 U.S.C. § 504(c)(2) must be filed with the clerk of the court of appeals within 30 days after the entry of the agency's order, with proof of service on all other parties to the agency's proceedings.